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Message Text

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INFO OCT-01 ARA-06 ISO-00 FEA-01 AGR-05 CEA-01 CIAE-00

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TAGS: EINV, ETRD, HO
"- " "
SUBJECT: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES
(GSP) UNDER SECS. 502 (B) (4) AND (6) OF TITLE V OF THE
TRADE ACT OF 1974, HONDURAS

REF: A. STATE 282968 B. 282967

1. AS REPORTED REF B, BEFORE GSP CAN BE IMPLEMENTED UNDER
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THE TRADE ACT OF 1974, THE INTERNATIONAL TRADE COMMISSION

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(ITC) MUST INVESTIGATE THE DOMESTIC ECONOMIC EFFECT OF PREFERENTIAL DUTY-FREE TARIFF TREATMENT ON IMPORTS OF THOSE ARTICLES PROPOSED FOR SUCH TREATMENT FROM COUNTRIES DESIGNATED IN AN EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES. THIS MESSAGE DISCUSSES COUNTRY ELIGIBILITY UNDER THE NATIONALIZATION AND ARBITRATION PROVISIONS OF THE ACT.

2. SEC. 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP ANY COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETERMINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH COUNTRY IS "OTHERWISE TAKING STEPS TO DISCHARGE ITS

OBLIGATIONS UNDER INTERNATIONAL LAW," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) (6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF U.S. CITIZENS (AGAIN INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS). FYI. UNLIKE THE HICKENLOOPER AMENDMENT (SBC. 620 (E) OF THE FOREIGN ASSISTANCE ACT), SEC. 502 (B) (4)(D) REQUIRES A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED TO CONGRESS REGARDING THE APPLICATION OF THAT SUBSE0TION TO ALL UNRESOLVED DISPUTES. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING DISPUTES INVOLVING U.S. PROPERTY. END FYI.

3. IT WOULD BE HIGHLY DESIRABLE FOR THE ITC TO UNDERTAKE ITS PRODUCT REVIEW WITH RESPECT TO THE BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES, AND FOR THE COMMISSION TO BEGIN ITS WORK AS SOON AS POSSIBLE. WE WOULD PREFER TO CONDUCT A DETAILED INVESTIGATION OF CASES WHICH MIGHT AFFECT HOST 0OUNTRY ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6) WHILE THE ITC STUDY IS IN LIMITED OFFICIAL USE

PROGRESS. FOLLOWING DISCUSSIONS WITH CONGRESSIONAL STAFFS, HOWEVER, IT IS NOT CLEAR THAT THE INTERIM WAIVER MENTIONED PARA. 4 REF. B WILL BE USED. SEVERAL ALTERNATIVE METHODS OF ACCOMPLISHING OUR OBJECTIVE ARE ALSO UNDER CONSIDERATION, BUT IT IS POSSIBLE THAT DETERMINATIONS OF COUNTRY ELIGIBILITY MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS PRODUCT ANALYSIS.

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4. ACCORDINGLY, POSTS ARE REQUESTED TO INFORM THE DEPARTMENT ASAP OF THE STATUS OF OUTSTANDING CASES WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6). IN THE CASE OF HONDURAS WE DO NOT BELIEVE THERE ARE ANY OUTSTANDING CASES, BUT WE WOULD APPRECIATE EMBASSY REVIEWING STATUS OF ALL DISPUTES INVOLVING U.S. LUMBER COMPANIES UNDER DECREE 103 TO CONFIRM THAT THERE IS NO CASE OUTSTANDING. CITATION TO PRIOR REPORTING WILL SUFFICE IF NO SIGNIFICANT DEVELOPMENTS HAVE OCCURRED IN THE INTERIM.

5. THE STARTING POINT FOR EVALUATION SHOULD BE THE TEXT OF THE LEGISLATION ITSELF. UNTIL DEFINITIVE LEGAL ANALYSIS OF 502 (B) (4) IS COMPLETED, POSTS SHOULD ASSUME IT APPLIES TO ALL PROPERTY (BOTH COMMERCIAL AND NONCOMMERCIAL) OF U.S. CITIZENS, WITHOUT REGARD TO VALUE.

AS A "RULE OF REASON," WE ARE LIMITING THE EVALUATION TO CASES ARISING IN THE POST-WAR ERA, I.E. SINCE JANUARY 1, 1946, OR THE DATE OF INDEPENDENCE OF THOSE COUNTRIES RECEIVING INDEPENDENCE, WHICH EVER IS LATER. SINCE SOME ACTIONS (SUCH AS COERCED PARTICIPATION, SEVERE CURTAILMENT OF MANAGEMENT PREROGATIVES, OR FORCED CANCELLATION OR RENEGOTIATION OF CONTRACTS) MAY BE EXPROPRIATORY IN EFFECT WHILE STOPPING SHORT OF OUTRIGHT TAKEOVER, POSTS ARE REQUESTED TO INFORM DEPARTMENT OF SUCH CASES TO ENABLE US TO EXERCISE JUDGMENT IN DETERMINING WHETHER "NATIONALIZATION" HAS OCCURRED WITHIN THE MEANING OF 502 (B) (4) (A)-(C). JUDGMENTS MUST ALSO BE MADE TO DETERMINE, INTER ALIA, WHETHER THE CRITERIA OF 502 (B) (4) (D) ARE BEING MET, AND WHETHER "GOOD FAITH" IS PRESENT UNDER 502 (B) (6).
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6. WOULD ALSO APPRECIATE MISSION COMMENTS REGARDING WHAT STEPS USG MIGHT APPROPRIATELY TAKE TO BRING THESE PROVISIONS TO THE ATTENTION OF HOST GOVERNMENT OFFICIALS, AND TO ENGOURAGE RESOLUTION OF OUTSTANDING DISPUTES. KISSINGER

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